NO. 86-123

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

Supreme Court, U.S.
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STATE OF ILLINOIS,

Petitioner,

vs.

RICHARD STACK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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On May 12, 1986, the Illinois Supreme Court affirmed the decision of the Illinois Appellate Court reversing defendant's conviction for the murder of his wife and son, and remanding the case for a new trial.

At trial, defendant had conceded that he killed the two, and defended solely on grounds of insanity — specifically, that he was so out of contact with reality that he thought he was killing two demons. In support of his insanity defense, defendant introduced evidence of his bizarre remarks and behavior during the three-hour period immediately after the murders. In rebuttal, the State introduced defendant's lucid

conversation, in the middle of the three-hour period, with an Assistant State's Attorney about the scope of his Miranda rights. The Illinois Supreme Court held that the introduction of this conversation was barred by this Court's recent decision in Wainwright v. Greenfield, 474 U.S. ___, 106 S.Ct. 534 (1986), and that this error alone was sufficient to require a retrial. People v. Stack, 112 Ill. 2d 301, 310, 493 N.E.2d 339, 343 (1986). This decision rested entirely on the federal constitution and on the Greenfield decision; no mention was made of any applicable Illinois state law. Because "it may arise again at a second trial," the Court also addressed a voir dire issue governed by state law, and found error on this point as well. People v. Stack, 112 Ill. 2d at 310, 493 N.E.2d at 343.

Respondent now urges this Court to deny the petition for a writ of certiorari on the theory that the Illinois Supreme Court's decision to reverse and remand rested on "independent and adequate state grounds," because of the state law voir dire issue, and because two additional matters not addressed by the Illinois Supreme Court had been found to be error by the Illinois Appellate Court. It should be noted that the Illinois Supreme Court did not mention whether the voir dire question would be reversible error absent the

Miranda/insanity issue, and that the other two issues found to be error by the Illinois Appellate Court were in fact raised in the State's Petition for Leave to Appeal to the Illinois Supreme Court, thus preserving these issues on appeal. It is not, however, even necessary to debate whether the Illinois Supreme Court did or did not find reversible error on any or all of the State law matters at issue.

The relevent question for determining federal jurisdiction is not, as Respondent would have it, whether any particular order of a state court (e.g., "remand this case") is supported by an independent and adequate state ground, but whether there remains any litigation whose outcome depends on federal law. The doctrine of "independent and adequate state grounds" is rooted in the requirement that a federal court decision address an ongoing case or controversy. If a federal decision — either way —cannot affect the real world outcome of the litigation because state law independently resolves the entire matter, then the federal decision is purely advisory and hence barred by the case or controversy clause. This Court properly finds a lack of jurisdiction in such cases. That is the situation in Uhler v. AFL-CIO, 468 U.S. ___, 105 S.Ct. 5 (1984), relied upon by Respondent; the only question was whether an

initiative would be allowed on the California ballot, and Justice Rehnquist concluded that the Supreme Court of California had disqualified the initiative on state as well as federal grounds. See also, Florida v. Casal, 462 U.S. 637, 103 S.Ct. 3100 (1983) (writ dismissed as improvidently granted because motion to suppress was sustained on the basis of state law which was more stringent than the fourth amendment); Jankovich v. Indiana Toll Road Commission, 379 U.S. 487, 385 S.Ct. 493 (1965) (writ of certiorari dismissed because damage action found to be denied on state as well as federal grounds).

When there is more than one error cited as a basis for reversal, the existence of "independent and adequate state grounds" is relevant only if there is an outright reversal of the conviction and any one of the state law grounds alone necessitates the reversal. Here, in contrast, a retrial has been ordered and it matters not whether the reversal decision was based on the exclusively federal Miranda issue, on the state law voir dire issue, or on both. For case and controversy purposes, the important point is that there is still a very much alive controversy. On a retrial, the admissibility of evidence of defendant's sanity will be of prime importance. Under the Illinois Supreme Court decision, the State of Illinois is barred

from using evidence which is highly probative of defendant's sanity at the time of the murders, and corroborates evidence that defendant was fabricating an insanity defense (while awaiting trial, he asked questions about the symptoms used by psychiatrists to diagnose insanity, and debated the advisability of remaining longer in a mental health facility as a means of bolstering his insanity defense). This evidence was barred solely on federal grounds; there was no Illinois law at all cited in support of this holding, let alone independent and adequate state law grounds. This case thus does not even require the sort of inquiry about the state court's reasoning mandated by Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983); here the Illinois Supreme Court explicitly found Wainwright v. Greenfield, 106 S.Ct. 534 (1986) to be "dispositive." People v. Stack, 112 Ill. 2d at 310, 493 N.E.2d at 343. Whether or not the State of Illinois may introduce defendant's rational discussion of his Miranda rights at a time when he claimed to be totally out of contact with reality, is a matter properly decided by this Honorable Court.

It should also be pointed out that Respondent made exactly the same "independent and adequate state grounds" argument to the Illinois Supreme Court when he filed

Objections to the State's motion to stay the mandate pending the filing and disposition of the petition for writ of certiorari. The Illinois Supreme Court subsequently granted the State's motion to stay the mandate. Apparently the Illinois Supreme Court, squarely presented with defendant's argument, is not of the view that its decision rests on state rather than federal law.

CONCLUSION

For all the reasons set forth in this Reply and in the Petition for a Writ of Certiorari, the State of Illinois respectfully requests this Honorable Court to exercise its jurisdiction and issue a Writ of Certiorari to review the judgment of the Illinois Supreme Court.

Respectfully submitted,

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